



**IN THE MATTER of the Administration of the Securities Industry Act, Chapter 363
and the Securities Industry Regulations, 2000**

AND

**IN THE MATTER of Proceedings under Part XVII of
the Securities Industry Regulations, 2000
and Section 33 of the Securities Industry Act, Chapter 363.**

BETWEEN

**THE EXECUTIVE DIRECTOR OF
THE SECURITIES COMMISSION OF THE BAHAMAS**

Plaintiff

AND

**FIRST BAHAMAS CAPITAL LIMITED (RENAMED CFAL SECURITIES)
AND
HIRAM COX**

Defendants

Matter No. SCB/HP/1/2008

HEARING PANEL FINAL DECISION

Re: Preliminary Issues raised by Hiram Cox.

Hearing Panel: Sterling Quant, Chairman;
Lennox McCartney; and
Ryan Knowles.

Hearing: Monday 21st September, 2009

The Hearing Panel (the Panel) held a hearing at the offices of the Securities Commission of the Bahamas (the Commission) concerning allegations against First Bahamas Capital Limited (FBCL), now called CFAL Securities, and a former employee, Mr. Hiram

Cox. This ruling concerns Mr. Cox and relates to the preliminary issues that were raised by Mr. Charles Mackay, Counsel for Mr. Cox, about the validity of the Formal Complaint (the Complaint) and the Panel's authority to hear the matter.

BACKGROUND

Mr. Cox was registered as a Broker by the Commission as of January 30, 2004 pursuant to Regulation 26 of the Securities Industry Regulations, 2000 (the Regulations). At the time Mr. Cox was employed as a Senior Broker with FBCL, a subsidiary of Colina Financial Advisors Limited (CFAL). FBCL was licensed by the Commission as a Broker-Dealer, Class 1 on April 18, 2002 pursuant to the Securities Industry Act, Chapter 363 (the Act).

The Executive Director alleged in the Complaint that during the material time Mr. Cox engaged in certain actions that are outlined in the Facts given in the Panel's decision concerning FBCL. Those facts are not included here because this ruling does not concern the validity or otherwise of the allegations made in the Complaint. This ruling concerns the Panel's authority to hear the Complaint brought before it on 21st September, 2009 and which alleged the breach of section 72(a) and (c) of the Act, which carries criminal penalties.

PRELIMINARY ISSUES RAISED BY THE DEFENDANT

At the commencement of the hearing preliminary issues raised by Mr. Mackay, Counsel for Mr. Cox, challenged the Panel's jurisdiction to hear the matter. In summary his arguments were that the Panel could not hear the matter because:

- Regulation 116 of the Regulations authorized the Formal Complaint to include breaches of the Regulations, and not breaches of the Act; and
- The defendant was charged pursuant to s. 72 of the Act which carries a criminal penalty, and the Panel is not a court empowered to hear criminal matters.

THE EXECUTIVE DIRECTOR'S RESPONSE

In response to the submissions made, it was argued by Mr. Gawaine Ward on behalf of the Executive Director that:

- The Panel was authorized by s. 33(a) of the Act to conduct regulatory hearings concerning breaches of the Act or Regulations. The Act is the primary legislation, and the Panel was therefore well within its jurisdiction to hear a Formal Complaint containing a breach of the Act despite the wording of reg. 116(1); and
- Section 33(a) of the Act authorises the Commission to conduct regulatory hearings concerning a failure to comply with both the Act and Regulations; therefore, the Panel could hold a regulatory hearing as the allegations clearly concerned a failure to comply with the Act.

The Panel, having considered the arguments submitted relative to the issues outlined above, rules as follows:

RULING

It should be noted that the Panel did not purport to act as a criminal court but only in its regulatory capacity, being empowered to conduct regulatory hearings pursuant to reg. 121 of the Regulations. The Panel considered the submissions made *in limine* and found no merit in them. Having considered its role in regulatory matters, the Panel rules that it may conduct regulatory hearings concerning breaches of the Act or Regulations pursuant to s. 33 of the Act.

As a result of the Panel's own consideration of this matter however, the Panel has concluded this matter on the basis of a point that was not addressed by the parties. The Panel considered whether there could be administrative hearings of matters concerning breaches of provisions that carry criminal penalties. The Panel concluded that it may only do so *provided that the Act expressly authorises the same*. As the Act does not include an express provision authorising the Commission to also institute regulatory action for provisions that carry criminal penalties, the Formal Complaint against Mr. Hiram Cox is hereby discontinued.

This is the unanimous decision of the Panel.

Dated this 20th day of May, 2010



Hearing Panel Chairman